

**UNITED STATES DEPARTMENT OF COMMERCE  
Herbert C. Hoover Building  
14<sup>th</sup> Street and Constitutional Avenue, N.W.  
Washington D. C. 20230**

**VILLA MARINA YACHT HARBOUR, INC.**

**PETITIONER**

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**CASE NUM.:CZM-2001-0529-117  
JOINT APPLICATION #178  
USACE NUM. 198800516(IP-VG)**

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**APPELLANT'S INFORMATIVE MOTION  
SUBMITTING TRANSLATION OF SUPPORTING DOCUMENTS**

**TO THE HONORABLE SECRETARY:**

**COMES NOW**, Petitioner Villa Marina Yacht Harbour, Inc.("VMYH"), through  
the undersigned attorney who very respectfully informs, states and moves as follows:

- 1 As Ordered we hereby submit the following:
  - a. List of Documents to be Translated, together with all translations.

**RESPECTFULLY SUBMITTED.**


**In San Juan, Puerto Rico, this 20th day of September 2004.**

I hereby Certify that a copy of the present document was sent via certified mail to;

**Secretary Of Commerce  
United States Department of Commerce  
Att. Molly Holt  
National Oceanic and Atmospheric Administration  
1305 East-West Highway, Room 6111  
Silver Spring, Maryland 20910.**

**Angel David Rodríguez**  
**President**  
**Puerto Rico Planning Board**  
PO Box 41119  
San Juan, Puerto Rico 000940-1119

**United States Army Corps of Engineers**  
**Attention: Edwin Muñiz,**  
400 Fernández Juncos Avenue,  
San Juan, Puerto Rico 00901-3299.



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**EDUARDO J. FERRER RAMIREZ DE ARELLANO**  
LICENCE NUM. 12,392  
P.O. BOX 9020485  
SAN JUAN, PUERTO RICO 00902-0485  
TEL: 721-8062      FAX: 721-3127

**LIST OF SUPPORTING DOCUMENTS  
APPELANT'S INNITIAL BRIEF  
(DOCUMENTS ALREADY SUBMITTED)**

<b><u>EXHIBIT#</u></b>	<b><u>DESCRIPTION</u></b>	<b><u>LANGUAGE</u></b>
EXHIBIT A	USCE Permit #88IPM-20516	
EXHIBIT B	PRPB Consistency Determination #CZ-88-0512-172)	
EXHIBIT C	Letters Dated 10/31/00, 12/20/00 & 1/29/01 from Ecosystems & Associates to the PRPB Letter Dated May 18, 2000 from the EQB to VMYH	SPA ENG
EXHIBIT D	Letter dated 12/17/02 from VMYH to PRPB	
EXHIBIT E	Letter dated 12/18/2002 from EP to USCE	ENG
EXHIBIT F	Letter dated 1/30/2003 from PRPB to G&L	
EXHIBIT G	Letter dated 7/11/2003 from EP to USCE Including; <ul style="list-style-type: none"> <li>1. Bathymetric Analysis;</li> <li>2. Wave Refraction/ Defraction Analysis</li> <li>3. Hydraulic Stability Analysis</li> </ul>	ENG ENG ENG
EXHIBIT H	PRPB Consistency Determination for Sea Lover's Marina Expansion dated 09/29/2000	

**LIST OF SUPPORTING DOCUMENTS  
APPELANTS REPLY BRIEF**

<b>IDENTIFICACION</b>	<b>DESCRIPTION</b>	<b>LANGUAGE</b>
ANNEX	USCE Permit #88IPM-20516 <b>SUBMITTED AS EXHIBIT A OF INNITIAL BRIEF</b>	
ANNEX 2	PRPB Consistency Determination #CZ-88-0512-172) <b>SUBMITTED AS EXHIBIT B OF INNITIAL BRIEF</b>	ENG.
ANNEX 3	PRPB Objetcion Letter Dated 09/26/2003	
ANNEX 4	USCG Letter Dated 10/10/2003 to USCE	
ANNEX 5	PRPB Cosnistency Determination for Sea Lover's Marina Expansion dated 09/29/2000 <b>SUBMITTED AS EXHIBIT H OF INNITIAL BRIEF</b>	
ANNEX 6	Federal and Commonwealth Joint Application #179	
ANNEX 7	PRPB letter dated 06/11/01 to EP	
ANNEX 8	VM letter dated 09/27/01 to PRPB	
ANNEX 9	COVER PAGE OF ENVIRONMENTAL DOCUMENT CZ-2001-0529-117	
ANNEX 10	VM Letter dated 04/05/02 to PRPB	SPA
ANNEX	VM Letter dated 12/17/02 to PRPB <b>SUBMITTED AS EXHIBIT D OF INNITIAL BRIEF</b>	
ANNEX 12	Letter dated 7/11/2003 from EP to USCE Including; <ol style="list-style-type: none"> <li>1. Bathymetrci Analysis;</li> <li>2. Wave Refraction/Defraction Analysis</li> <li>3. Hydraulic Stability Analysis</li> </ol> <b>SUBMITTED AS EXHIBIT G OF INNITIAL BRIEF</b>	ENG ENG ENG
ANNEX 13	Letter dated 1/30/2003 from PRPB to G&L <b>SUBMITTED AS EXHIBIT F OF INNITIAL BRIEF</b>	



ANNEX 14	VM Letter dated 03/05/03 to PRPB
ANNEX 15	PRPB Letter dated 07/09/03 to VM
ANNEX 16	VM Letter dated 07/29/03 to PRPB
ANNEX 17	Sea Grant Letter dated 05/01/2003 to PRPB
ANNEX 18	PR Culture Institute Letter dated Dec. 10, 1992
ANNEX 19	EQB Letter to PRPB dated April 28, 2003
ANNEX 20	Submarine Archeological Resources and Sites Study and Conservation Council Letter dated 08/25/2000

**\*DOCUMENTS ALREADY SUBMITTED IN THE INNITIAL BRIEF WILL NOT BE INCLUDED AGAIN.**

**TRANSLATED DOCUMENTS  
APPELANT'S INNITIAL BRIEF  
& APPELANTS REPLY BRIEF**

- |     |                      |  |
|-----|----------------------|--|
| 1   | EXHIBIT C            | Letters Dated 10/31/00, 12/20/00 & 1/29/01 from Ecosystems & Associates to the PRPB                |
| 2.  | EXHIBIT D (ANNEX 11) | Letter dated 12/17/02 from VMYH to PRPB  |
| 3   | EXHIBIT F (ANNEX13)  | Letter dated 1/30/2003 from PRPB to G&L  |
| 4.  | ANNEX 7              | PRPB letter dated 06/11/01 to EP   |
| 5   | ANNEX 8              | VM letter dated 09/27/01 to PRPB   |
| 6.  | ANNEX 10             | VM Letter dated 04/05/02 to PRPB   |
| 7.  | ANNEX 14             | VM Letter dated 03/05/03 to PRPB   |
| 8.  | ANNEX 15             | PRPB Letter dated 07/09/03 to VM   |
| 9.  | ANNEX 16             | VM Letter dated 07/29/03 to PRPB   |
| 10. | ANNEX 17             | Sea Grant Letter dated 05/01/2003 to PRPB  |
| 1.  | ANNEX 18             | PR Culture Institute Letter dated Dec. 10, 1992  |
| 12  | ANNEX 19             | EQB Letter to PRPB dated April 28, 2003  |
| 13. | ANNEX 20             | Submarine Archeological Resources and Sites Study and Conservation Council Letter dated 08/25/2000 |

**EXHIBIT C**

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**ECOSYSTEMS & ASSOCIATES**  
ENVIRONMENTAL ASSESSMENT IN TERRESTRIAL & MARINE ECOSYSTEMS

January 29, 2001

["Received" stamps]

Arch. Henry Gutiérrez  
Gutiérrez Látimer & Gutiérrez  
P.O. Box 13171  
Santurce, PR

Re: Villa Marina

Dear Henry:

Sea Lovers marina has submitted an expansion for its piers. This is in conflict with the plans for the Villa Marina Yacht Harbour expansion proposal that is also being considered for a permit. As a result of this situation, the Villa Marina expansion concept has been modified in order to be able to continue with its expansion plan. The proponent has asked me for an opinion as to the proposed modification.

I have reviewed the new configuration for the marina expansion on the project of reference. It re-locates the breakwater some 250 feet to the east, that is, away from the cul-de-sac at Sardinera Bay. It would now be located in alignment with the existing breakwater at Puerto Chico Marina. The depth of the marine bed at this site is between 12 and 13 feet, according to the nautical chart for this sector and the data obtained from our prior studies.

This change in location reflects some considerations on the impacts on marine life, circulation aspects, and the movement of boats in the sector. We will discuss each one of these aspects in that same order:

**1. Impacts on Marine Life**

The size of the proposed breakwater does not change. The irreversible compromise of the resource would be the same, only its location changes. In this case it would be located as stated, some 250 feet further out of the proposed location. Given that the depth is a bit greater, the base of the rocks on the marine bed is broader.

the depth. [sic] The resource that would be compromised here is a marine bed lacking any benthic communities of importance. As indicated in several documented, sedimentation in this sector of the coast line does not allow for the growth of macroscopic sea weeds, corals, or marine phanerogams. Red sea grasses have been reported growing at a depth between 6 and 15 feet (draft EIS Sun Bay Resort & Marina). We can conclude from our studies that this is not the situation at Sardinera Bay. These conclusions are reflected in prior studies for this marina and from another study conducted in 1987 for another marina titled Preliminary Evaluation Landfill and Breakwater for Dry Dock "Dry Stack" Beltrán Community, Fajardo, P.R. A copy of that document is included, with color photos of the marine bed.

The breakwater would be located farther away from the coast. Visually, this sector has less sedimentation than the previous location. A breakwater with this fine sediment bottom would offer two advantageous changes for marine biota. The first one is to offer a solid and stable substrate where sessile organisms from the benthos may adhere, such as sponges, sabellas, bryozoans, anthozoa, and others. The high sedimentation condition at this site would be limiting for some of these organisms, particularly if they feed through the filtration of suspended particles in the water column ("plankton feeders"). Nonetheless, it would be a good habitat at the shallower portion where there is less suspended sedimentation. In addition, it would allow for predators to settle, such as anemones, crabs, and others. Furthermore, it would offer a stable substrate for green, brown and red sea grasses as far as the penetration of light would enable them to subsist.

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The second positive aspect of this breakwater for marine life would be its effect as an artificial reef. The rocks 2 to 3 feet in diameter to be used form a complex set of tunnels in the spaces between them. These are used for shelter by a large number of juvenile and adult fish species, crabs, and other crustaceans. In this case the habitat would be a continuity of the habitat offered by the Puerto Chico breakwater.

## 2. Circulation Aspects:

The new location of the breakwater would be about 250 [sic] from the originally proposed location. It would be at a greater depth, with its well-known effects as to the influence on the movement of sediments.

### 2

The Sardinera Bay has a low energy system given the protection by the outer keys, as discussed in the EIS for this project. By locating it at a greater depth, the effect of the sediment movement by the action of the waves would be considerably less, if any. This is so because of the inverse relation between the energy of the wave and the depth. Waves are not a considerable factor at this location, with the exception of possible hurricane events, which was previously considered already.

Maritime currents within Sardinera Bay are minor since they are not within the pattern exercised by the effect of the north-Equatorial currents east of Bateria Point. This being a bay, the effect of the currents by [sic] comes as a result of the water ingress and egress provoked by the changes in the tide level. A second effect is the one produced by the wind, with very little influence on the waves. This is shown in the currents data we have taken.

The movement of sediments would be controlled predominantly by tide changes, not waves, based on the reason given above. Since tide changes in Puerto Rico are minor (barely 1 foot), it will not have a palpable effect on the sediments with the new location of the breakwater, either.

We must mention that, although to a minimum degree, the breakwater will tend to accumulate fine sediments inside. Possibly during hurricane conditions it could also promote sand build-up. Just like in any other marina, it is possible for a maintenance dredging to be required at some point.

The Puerto Chico marina was built more than 30 years ago and has had no visible sediment accumulation or loss effect in its surroundings.

2. Vessels movement:

The new configuration for the Villa Marina Yacht Harbour expansion eliminates any navigation conflict towards the Sea Lovers marina and the pier facilities for the fishermen at Sardinera Bay. Vessel traffic would be to the south.

All other aspects of the cumulative effect of navigation south of Sardinera Bay would in no way change as

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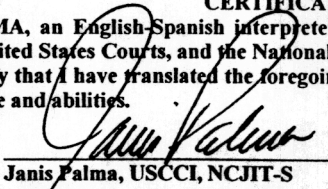
previously established. The entry channel for Villa Marina is about 90 feet wide, whereas the navigation space in the Villa Marina expansion is a minimum of 140 feet in its narrowest part.

It is our desire that the information we have provided here may serve the purpose of clarifying any doubts regarding the applicability of our prior studies to the Villa Marina expansion modifications. In our review of existing documents we found no information about benthos biological data, the nekton, or maritime currents taken for the proposed expansion of the Sea Lovers Marina. We feel these could have provided valuable information for the data our firm obtained.

Sincerely,

[signature]  
Frank Torres

["Received" stamp]

<b>CERTIFICATION BY TRANSLATOR</b>	
I, JANIS PALMA, an English-Spanish interpreter and translator certified to that effect by the Administrative Office of the United States Courts, and the National Association of Judiciary Interpreters and Translators (NAJIT), do hereby certify that I have translated the foregoing document and it is a true and accurate translation to the best of my knowledge and abilities.	
 Janis Palma, USCCI, NCJIT-S	<u>9/4/07</u> Date

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**ECOSYSTEMS & ASSOCIATES**  
ENVIRONMENTAL ASSESSMENT IN TERRESTRIAL & MARINE ECOSYSTEMS

October 31, 2000

["Received" stamp]

Mrs. Eva Tamayo  
Director  
Sub-program on Land Use Plans  
Planning Board  
PO Box 41119  
San Juan, PR 00940-1119

Re: CZ2000 0523-0078  
Villa Marina Expansion Project  
Sardinera Ward, Fajardo

Dear Mrs. Tamayo:

We make reference to your letter sent on October 10, 2000 in which the comments submitted by the Department of Natural and Environmental Resources (DNER) and are included, the Environmental Quality Board (EQB) and the Fish and Wildlife Service.

We have reviewed this information together with the letter from the DNER and we can infer that it comes from the joint application by the Corp of Engineers submitted in September 1999. These concerns were subsequently covered by the environmental document submitted on September 20, 2000. This document includes information about the specific design of the breakwater, material deposit method, and pollution control, etc. It also mentions the care that will be taken with marine species, including the manatee, before, during, and after the construction.

Another aspect to be highlighted is the impact on benthic communities according to a study and, subsequently a visual inspection, in the Sardineras Bay sector, evidencing the absence of microscopic algae or sea grasses at depth of 8 feet or more. Therefore, herbaceous marine life is not put at risk.

PALMAS DEL MAR, 13 PORT ROAD, HUMACAO, P.R. 00791-6051 • TELS. HUMACAO (787) 850-6033 • (787) 850-6012 FAX (787) 850-6093  
E MAIL [ecosys@caribe.net](mailto:ecosys@caribe.net)

Page 2  
Mrs. Eva Tamayo  
October 31, 2000

As to the aspect that concerns tide fluctuations and water circulation, a study of the sector was presented. Nevertheless, a study was recently conducted, which will be submitted as a supplement that contributes to the environmental document. The preliminary information corroborated our suspicions about currents here being mild, primarily affected by the wind and with few consequences for silt transport.

All this information is specifically detailed in the following chapters of the Environmental Impact Statement:

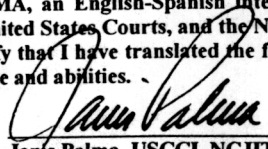
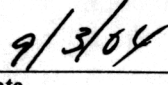
1. Specific description of the construction process and pollution control methods for the work. *Chapter IV, V Analysis of Possible Environmental Impact and Mitigation Measures, pages 39-43.*
2. Cumulative impact of the project. *Chapter VI Analysis of Alternatives, pages 44-46.*
3. Project impact on benthic communities, marine life and water circulation. *Chapter III Description of Proposed Site, sections 4, 5, 6, 7, 10, 23, pages 11-26.*

Based on this information, I hope that your concerns and those of the DNER have been addressed to some extent regarding the project and its impact.

Should you need additional information, or should any doubts come up, please contact me at 850-6012 or 850-6033.

Cordially,

[signature]  
Frank Torres

<b>CERTIFICATION BY TRANSLATOR</b>	
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 Janis Palma, USCCI, NCJIT-S	 Date



[logo]

**ECOSYSTEMS & ASSOCIATES**  
ENVIRONMENTAL ASSESSMENT IN TERRESTRIAL & MARINE ECOSYSTEMS

December 20, 2000

[various date and "Received" stamps]

Mrs. Eva Tamayo  
Director of the Sub-program on Land Use Plans  
Planning Board  
PO Box 41119  
San Juan, PR 00940-1119

Re: CZM 2000 0523-0078  
Villa Marina Expansion Project  
Sardinera Ward, Fajardo

Dear Mrs. Tamayo:

We recently gave you our report on the currents for the project of reference. We subsequently received a letter from you acknowledging that there has been compliance with some of the comments made by the agencies, but that the following matters were yet to be clarified:

1. Comments by the State Historic Preservation Office (SHPO). The project does not impact land resources. The accesses will be on places on which there has already been construction, with sidewalks and accesses from the existing marina. It was already determined that in the expansion area there are no marine archeological resources. Therefore, we believe that any concern by this agency has been covered.
2. Comments by Mr. Richard Vito. In a clarifying document concerning maritime traffic, a memorandum was submitted explaining that the vessels flow along the proposed expansion is estimated to be at a maximum of 37.5 vessels a week during high season. A copy of the document submitted on June 20 is included. Furthermore, we wish to clarify that these vessels come in and go out at different times during the day. The design for the proposed expansion was done taking this aspect into account. The exit was aligned with the existing fishermen's pier, such that they may go out on a straight line without having to change their course. The narrowest space is 150 feet, as illustrated in the blueprint enclosed. This is enough risk-free space for two vessels to travel in opposite directions at the speed allowed within the marinas. This narrowest spot is at the northeastern end of the proposed marina expansion. Inside and outside of this spot the space broadens.

3. Dredging discrepancies. The prior document mentioned that dredging would take place at a depth of 8 feet. Now, after evaluating the depths in the area, I have been informed that the dredging will not be necessary.

PALMAS DEL MAR, 13 PORT ROAD, HUMACAO, P.R. 00791-6051 • TELS. HUMACAO (787) 850-6033 • (787) 850-6012 FAX (787) 850-6093  
E MAIL [ecosys@caribe.net](mailto:ecosys@caribe.net)

Page 2  
Mrs. Eva Tamayo  
December 20, 2000

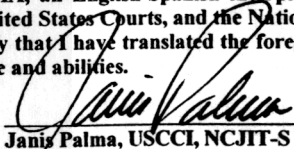
These were the issues that were pending a response from the proponents in order to proceed with the evaluation of the application for federal compatibility consistency (CZM) according to what I was able to corroborate with Mrs. Gisela Román last Friday.

We will be most happy to clarify any additional doubts regarding our application. We want to take advantage of our meeting today to discuss any details regarding the issues presented here and any other matter that may require clarification.

We thank you for your generosity with your time to meet with us on such short notice.

Sincerely,

[signature]  
Frank Torres

<b>CERTIFICATION BY TRANSLATOR</b>	
<b>I, JANIS PALMA, an English-Spanish interpreter and translator certified to that effect by the Administrative Office of the United States Courts, and the National Association of Judiciary Interpreters and Translators (NAJIT), do hereby certify that I have translated the foregoing document and it is a true and accurate translation to the best of my knowledge and abilities.</b>	
 Janis Palma, USCCI, NCJIT-S	<u>9/3/04</u> Date

[logo]

**Eduardo Ferrer Ramírez de Arellano**  
**ATTORNEY AT LAW**

December 17, 2002

HAND DELIVERED

[date stamp]

Rose Ortiz  
Use Plans Sub-Program -  
Planning Board  
PO Box 41119  
San Juan, Puerto Rico 000940-1119

**RE: CZ-2001-0529-117**  
**JOINT APPLICATION #179**  
**VILLA MARINA YACHT HARBOUR EXPANSION**  
**FAJARDO, PUERTO RICO**

Dear Mrs. Ortiz:

I make reference to our telephone conversation this morning, in which we discussed the various pending aspects for the project of reference, which as you know has been submitted since 2001, and which actually began in 1999.

First, I would like to confirm that the proposed project consists of an expansion of 125 additional piers, as indicated in joint application number 179, and that the proposed design in this case has suffered no changes. We enclose once more a copy of the blueprint with the proposed design, indicating the number of piers and the distances.

[date stamp]

Although we had replied to your communication dated June 11, 2001, on September 27, 2001 (copy enclosed) in which we included, through Ecosystems & Associates, our answers to the concerns raised by the various agencies, we once more proceed to clarify the issues covered:

1 and 2: As a result of the original confusion created by the consultation number 2000-24-0340-JPU (see letter dated September 27, 2001 enclosed) for the development of a multi-family tourism project, and the instant application for a consistency finding for the expansion on the existing marina, the PB and other agencies handled the matter jointly and an EIS was demanded, which was circulated and commented by the agencies consulted, until it was submitted to the PB in its final version on July 19,

**PO Box 9020485 SAN JUAN PR 00902-0485 • Tel. (787) 721-8063 • Fax (787) 721-3127**

201 (30 copies of the EIS and 2 copies on CD, see letter sent to Diana Pérez on July 19, 2001). The EQB requested a public notice advice, but the PB never proceeded to issue it because of the confusion between both projects.

Proponent withdrew consultation #2000-24-0340-JPU for the commercial development, stating that they would only continue with the marina expansion, for which the PB requested only a finding of consistency with maritime zone, as required by the United States Corps of Engineers, in order to approve the project. See letter of April 5, 2002 sent to you, which includes the request for the closing of the case, and a copy of all agencies consulted for the EIS. The environmental document was submitted with the above letter, under a CZ number to comply with the 4C, since the EIS was no longer a requirement given that only the consistency consideration was left to resolve in the context of a joint application for expansion before the United States Corps of Engineers. The environmental document submitted covers each and every one of the issues raised and in fact even went through the EQB's scrutiny.

As to the endorsement letters or comments from the agencies, these are contained in the consultation file #2000-24-0340-JPU, were covered by the final environmental document submitted and they were covered item by item by Ecosystems & Associates in their letters dated January 29, 2001, December 20, 2000, and October 31, 2000.

3. The environmental document submitted includes the currents study, and the letters from Ecosystems also cover this issue and the need for a breakwater.

4. Although a copy of the blueprint was already included, stating the dimensions and distances in relation to Sea Lover's Marina, we again enclose a copy of it (6 copies as requested). The minimal distance kept between both projects is 150 feet. This distance is appropriate considering that the industry uses one time and a half the size of the largest vessel moored. Considering that Sea Lovers does not keep vessels greater than 50 feet (in which case the desired distance would be 75 feet so it may turn completely) this distance is more appropriate.

As to the status of the application before the Corps of Engineers, the public notice was already posted and comments were received, and although these have been answered on two occasions, as well as the Corps of Engineers concerns, a more detailed and comprehensive reply is being prepared. We enclose copy of two communications dated May 13, 2002 and October 15, 2002 with our replies to the Corps of Engineers, dated August 22, 2002, July 10, 2002, and October 22, 2002. Over the course of the next few days we hope to be able to send you a copy of the answers to the comments that will be filed with the Corps of Engineers in more detail. In addition, we are coordinating a meeting with the U.S. Coast Guard, as requested by the Corps of Engineers, to present the case to them and afford them an opportunity to comment. We hope that once these two matters are covered, the Corps of Engineers will be in a position to issue the permit subject to the coastal zone certification.

I want to express once more that this case should have been deemed complete for consideration and the regulatory time should have started since April 5, 2002 at the latest, since it had the environmental document and basically all known concerns had been covered. This expansion in basically the same place with minimal variations, had already been approved by the Corps of Engineers and the consistency had already been found by the PB (copies of the previous permits are enclosed), and other than the Sea Lover's expansion, from which it is appropriately separated, there are no changes in the area. It is certainly a better practice to expand in areas with an infrastructure where there has already been an impact by development, than to impact new areas. Villa Marina has always established the need for additional spaces for the industry.

Although we understand that all agencies have had an opportunity to express themselves in both forums, reason for which it is not necessary to notify them again, should a new notice be found to be necessary, we ask that it be done immediately and that the procedure be deemed complete, leaving pending only the need to answer subsequent comments received and which the PB feels that should be answered. This is a case that has actually been pending since 1999 and that was previously approved and considered to be compatible, thus it should receive priority and consideration in addition to the patent need for additional piers to meet the demand and tourism importance of this sector, since we are proposing a "commercial charter" center or recreational sea vessels rental center in this expansion.

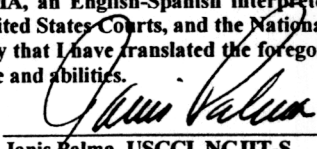
Should you need additional information, please contact me.

Sincerely,

[signature]

Eduardo Ferrer Ramírez de Arellano

c. Gustavo Rodríguez

<b>CERTIFICATION BY TRANSLATOR</b>	
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 Janis Palma, USCCI, NCJIT-S	Date <u>9/4/04</u>

JP  
COMMONWEALTH OF PUERTO RICO  
OFFICE OF THE GOVERNOR  
PLANNING BOARD

MINILLAS GOVERNMENT CENTER  
DE DIEGO AVE., STOP 22, SANTURCE  
PO Box 41119, SAN JUAN, PUERTO RICO 00940-1119

January 30, 2003

Arch. Enrique H. Gutiérrez  
President  
Gutiérrez – Latimer C.S.P.  
654 Muñoz Rivera Ave., IBM Toser [sic]  
PO Box 13171  
San Juan, P.R. 00908-3171

Certification of Federal Compatibility  
CZ-2001-0529-117  
Villa Marina Yacht Harbor  
Sardinera Ward, Fajardo

Dear architect Gutiérrez:

We held a meeting this morning in relation to the case of caption. As a result of this meeting, the following agreements were reached:

- 1- For purposes of starting the evaluation period for this application, the Planning Board will exempt proponent from the requirement of submitting a copy of the letter to the Environmental Quality Board endorsing the Environmental Impact Statement (EIS), as had been required in our letter of June 11, 2001. Notwithstanding, this does not exempt them from meeting this and other necessary state requirements to carry out the proposed action.
- 2- Proponent will submit seven (7) copies of a new plan and descriptive memorandum that includes the location of the existing parking area for the current marina and the new spaces to be provided for the proposed expansion. This must specify the number of parking spaces currently available and the new ones to be provided.
- 3- Proponent will respond to the concerns posed by Mr. Richard Vito (Sea Lovers Marina) and the agencies consulted. A letter will be submitted with the necessary information to that effect. We are providing a copy of the comments submitted by the agencies and the letters by Mr. Richard Vito.

- 4- Proponent must submit to the Planning Board a copy of all new information that has been or is submitted to the United States Corps of Engineers.

"[illegible] PUERTO RICO'S TRANSFORMATION"

PAGE 2  
FEDERAL COMPATIBILITY CERTIFICATION  
CZ-2001-0529-117

According to the Federal Compatibility Procedures, the review process for this application will not begin until such time as the information stated in items two (2) and three (3) of this communication have been submitted.

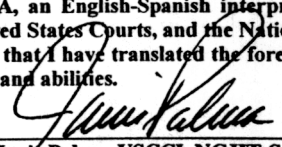
For any other questions regarding this matter please contact Mrs. Rose A. Ortiz at (787)-723-6200 ext. 2020. Awaiting your response to the contents of this letter and with nothing further on the matter, I remain yours.

Cordially,

[signature]  
Norma Alvira Ruíz  
Director  
Land Use Plans Sub-Program

c Mr. Edwin Muñiz, COE  
Mrs. Wanda García, JCA  
Mr. Celso Rossy, DRNA  
Mr. Eduardo Ferrer, Villa Marina Yacht Harbour

RAO

<b>CERTIFICATION BY TRANSLATOR</b>	
I, JANIS PALMA, an English-Spanish interpreter and translator certified to that effect by the Administrative Office of the United States Courts, and the National Association of Judiciary Interpreters and Translators (NAJIT), do hereby certify that I have translated the foregoing document and it is a true and accurate translation to the best of my knowledge and abilities.	
 Janis Palma, USCCI, NCJIT-S	Date <u>9/4/04</u>

CERTIFIED TRANSLATION

OLGA M. ALICEA, USCCI

[letterhead of the Commonwealth of Puerto Rico  
PLANNING BOARD]

June 11, 2001

Gustavo Adolfo Rodríguez  
Environmental Permitting Inc.  
P.O. Box 362893  
San Juan Puerto Rico 00936-2893

Federal Compatibility Certification  
CZ-2001-0529-117  
Villa Marina Harbour Expansion  
Sardinera, Fajardo

Dear Mr. Rodríguez:

We have received the application for federal compatibility determination with the Coastal Zone Management Program, for the captioned project. In reviewing it, we have found that it is missing necessary information to be evaluated, as described in Section 930.58 of the Federal Compatibility Proceedings. To those effects, you must submit the following information:

1. Copy of the letter from the Environmental Quality Board endorsing the Environmental Impact Statement (EIS).
2. Letters of endorsement or comments about the EIS from the agencies.
3. Include current studies that prove that the breakwater is necessary, that its design is adequate, and that it will not adversely affect the marinas already existing in the area.
4. A diagram prepared by a surveyor that shows the dimensions and location of the proposed expansion in connection with the Marina Sea Lovers approved expansion.

According to the Federal Compatibility Proceedings, the review period for this application will not begin until the information indicated above is submitted, for which you are granted fifteen (15) days as of the date of this letter.



CERTIFIED TRANSLATION

OLGA M. ALICEA, USCC

Page 2  
Federal Compatibility Certification  
CZ-2001-0529-117

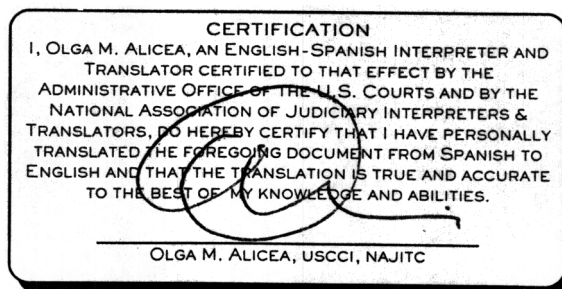
For any question regarding this matter, please contact Ms. Rose A. Ortiz at 726-0289. Expecting your response to the above and with nothing further on this matter, I remain,

Cordially,

(Signed)  
Eva Tamayo  
Director  
Land Use Plans Sub-program

c: Mr. Edwin Muñiz, CoE  
Mrs. Wanda García, EQB  
Mrs. Celso Rossy, DNER

ET/RAO/mir



[logo]  
Villa Marina  
Yacht Harbour Inc.

September 27, 2001

HAND DELIVERED

Rose Ortíz  
Uses Sub-Program  
PLANNING BOARD  
Commonwealth of Puerto Rico  
Santurce, Puerto Rico

**RE: COASTAL ZONE CASE NUMBER CZ-2001-0529-117  
JOINT APPLICATION #179**

[date stamp]

Dear Mrs. Ortíz:

I make reference to your letter dated June 11, 2001 and to our meeting earlier this month, where I indicated that due to the fact that letter was addressed to our consultant Gustavo Rodríguez we had not received it until you handed it to us.

In relation to the information you requested, I would like to let you know that we are waiting for the Environmental Quality Board for the approval of the EIS, as well as the comments from agencies, and that the issues regarding the currents, breakwaters, and cumulative effects are covered in detail within the EIS. We include a copy of the EIS, which was circulated according to the PB, for verification.

We submitted a document today addressed to the PB President, regarding a resolution in the consultation #2000-24-0340-JPU, that includes a copy of the blueprint requested indicating the dimensions and location of the expansion in relation to Sea Lover's Marina and its approved expansion, and the distance of 150' between both pier terminals, in addition to the approvals and findings of compatibility issued previously by the PB.

PO Box 9020485 San Juan PR 00902-0485 • Tel. (787) 721-8062 • Fax (787) 721-3127

I also enclose copy of the letters dated January 29, 2001, December 20, 2000, and October 31, 2000 by environmentalist Ecosystems & Associates, including information on all issues raised by the interested parties and agencies. In addition, I enclose a copy of the Submarine Archeological Resources and Sites Study and Conservation Council endorsing the expansion.

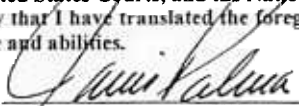
Should you have any doubts please contact the undersigned.

Sincerely,

[signature]

Eduardo Ferrer-Ramírez, Esq.

cc. Rose Ortíz, JP  
Eric Del Toro, JP  
EFB, VMYH

<b>CERTIFICATION BY TRANSLATOR</b>	
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 Janis Palma, USCCI, NCJIT-S	Date <u>9/8/04</u>

[logo]  
Villa Marina  
Yacht Harbour Inc.

April 5 2002

HAND DELIVERED

["Received" stamp]

Rose Ortíz  
Uses Sub-Program  
PLANNING BOARD  
Commonwealth of Puerto Rico  
Santurce, Puerto Rico

**RE: COASTAL ZONE CASE NUMBER CZ-2001-0529-117  
JOINT APPLICATION #179**

Dear Mrs. Ortíz:

Enclose please find our application for the closing of the consultation #2000-24-0340-JPU, in which Villa Marina desisted from the hotel project (Condo-hotel) proposed, and requests that the EIS submitted for the marina expansion be transferred to your division and case.

We also enclose a copy of the EIS submitted in the aforementioned consultation and prepared by Ecosystems & Associates, in which we have changed the case number to address to the case CZM (CZ-2001-0529-117), and thus comply with the requirement of submitting an environmental document in this case, which answers all the concerns by the agencies contacted.

As you may observe, we include copy of the notices, all pertinent agencies were consulted with the EIS for the marina expansion, and these had an opportunity to make comments on the proposed project as well as the EIS submitted, which had already been reviewed by the EQB and returned to the PB for public notice.

As we have always stated, both cases were joined and confused, including the EIS requirement, which was required in relation to the hotel development consultation. The marina expansion, through the joint application, requires only a coastal zone certification, and the environmental document submitted originally and now converted to an EIS, fully meet the legal requirements, in addition to covering all comments made by the agencies for the proposed expansion, which was already the object of analysis through this case and the previous case number **CZM-2000-0523-078**.

PO Box 9020485 San Juan PR 00902-0485 • Tel. (787) 721-8062 • Fax (787) 721-3127

The two neighboring marinas, Puerto Chico Marina and Sea Lovers Marina, located on the same bay and practically sharing the same area, have presented and obtained expansion permits in parallel fashion with no study, EIS, etc., problems, and on the contrary, the expansion proposed herein has met with obstacles that are really non-existent.

With the information submitted, including the environmental document, and the hotel consultation withdrawn, we believe the complete file should be declared [sic], and start the regulatory period to consider the consistency application.

The EIS submitted includes comments from and answers to agencies who offered comments on the marina expansion.

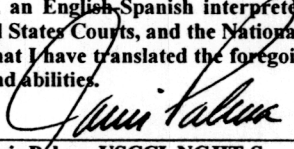
Should you need additional information or have any doubts please contact the undersigned.

Sincerely,

[signature]

Eduardo Ferrer-Ramírez, Esq.

["Received" stamp]

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 Janis Palma, USCCI, NCJIT-S	Date <u>9/4/04</u>

COMMONWEALTH OF PUERTO RICO  
OFFICE OF THE GOVERNOR  
PLANNING BOARD

VILLA MARINA YACHT HARBOUR, INC.

PETITIONER

\*  
\*  
\*  
\*

CONSULTATION: 2000-24-0340-JPU

\*\*\*\*\*

**MOTION TO CLOSE CASE**

**TO THE HONORABLE BOARD:**

COMES NOW Petitioner, Villa Marina Yacht Harbour, Inc., through its legal representative, who very respectfully states and petitions:

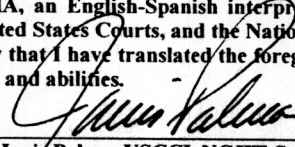
1. Petitioner has decided not to continue with the development of the Hotel (Condo-Hotel), therefore desists and requests that the instant site consultation be CLOSED.
2. The process started for the Environmental Impact Statement (EIS) submitted for the instant consultation, exclusively as to the marina expansion, requested of the United States Corps of Engineers (Joint Application number 179) and requiring a Coastal Zone Certification, is hereby requested to be transferred to case CZ-2001-0529-117 where said certification of consistency is being processed. The EIS of reference has already been evaluated by the EQB and returned to the PB for public notice to be issued.
3. Petitioner requests the closing of the instant consultation since it has no plans to continue with the proposed hotel development.

In San Juan, Puerto Rico, on April 5, 2002.

[signature]

EDUARDO J. FERRER RAMÍREZ DE ARELLANO  
COLLEGIATE NO. 12,392  
P.O. BOX 9020485  
SAN JUAN, PUERTO RICO 00902-0485  
TEL. 721-8062 FAX: 721-3127

["Received" Stamp]

<b>CERTIFICATION BY TRANSLATOR</b>	
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 Janis Palma, USCCI, NCJIT-S	Date <u>9/4/04</u>

[logo]  
Villa Marina  
Yacht Harbour Inc.

March 5, 2003

[date stamp]

HAND DELIVERED

Normal Alvira Ruíz  
Use Plans Sub-Program  
Planning Board  
PO Box 41119  
San Juan, Puerto Rico 00940-1119

**RE: CZ-2001-0529-117  
JOINT APPLICATION #179  
VILLA MARINA YACHT HARBOR  
FAJARDO, PUERTO RICO**

Dear Mrs. Ruíz:

We make reference to your communication dated January 30, 2003, in which you request certain information to be able to start the review process according to the Federal Compatibility Program. It specifically requests that paragraphs 2 and 3 be answered in order to begin.

Although we understand that all the information requested was submitted on several occasions, we proceed to answer each one of the paragraphs:

1. In relation to the Environmental Impact Statement (EIS), we want to clarify that in this case (application for consistency) an environmental document has been submitted several times, undergoing modifications a number of times to include and accommodate this Board's concerns as well as those of the DNER. Because of the confusion with Consultation #2000-24-0340-JPU for the location of the Condo-Hotel on an adjoining site, an EIS was requested as part of this consultation, thus the environmental document became an EIS.

The agencies and the EQB made comments on the EIS and we were asked for the customary copies of the final version. On July 19, 2001, 30 copies were submitted together with a CD (see letter to Diana Pérez). The EQB



then proceeded to request that the PB publish the public notice, but this never happened.

PO Box 9020485 San Juan PR 00902-0485 • Tel. (787) 721-8062 • Fax (787) 721-3127

In a letter dated April 5, 2002 Rose Ortíz was notified that Villa Marina had desisted from the site consultation because of the confusion, and requested that the EIS be used as an environmental document to comply with Article 4(c), submitting a copy of the environmental document numbered in the instant CZ case. A copy of this communication was also submitted to the DNER. This happened almost 1 year ago. **We enclose copy of the letter dated December 17, 2002 which makes reference to these matters.**

To our understanding, the environmental document submitted, which is complete and includes all the requested comments and requirements, evidences the compliance with article 4(c). Our environmental document is far more comprehensive than those that have been required of the Sea Lover's Marina and Puerto Chico Marina for recent expansions, who submitted simple environmental assessments (EA), without being required to provide an EIS.

In a letter dated May 8, 2000 the Environmental Quality Board issued a **Notice of Completeness of Application** in relation to the prior joint application re-submitted under the instant case. **(copy enclosed).**

2. A descriptive memorandum is enclosed, which includes the subject of parking and the information required as well as 7 copies of the expansion blueprint showing the new parking area. In that letter, dated December 17, 2002 we had submitted 6 copies of the specific blueprint for the expansion.
3. As to the comments by mister Richard Vito and the agencies consulted, we first want to clarify that mister Vito is the owner of Sea Lovers Marina, the neighboring marina and competitor with the proponent, and who has not been qualified as an expert on the matter, therefore his comments must be considered with caution in light of this fact.

All these comments were covered in detail and notified to Mrs. Ortiz through letters from us dated August 27, 2002 in which we included two letters notifying the CE (one dated August 22, 2002 and another one of July 10, 2002) where all of Vito's comments as well as those from others were answered, and a letter dated September 27, 2001 in which three letters, in turn, are enclosed from Ecosystems & Associates regarding the comments made by Vito and other agencies. We enclose a copy of the

letter dated August 27, 2002 addressed to Rose Ortiz together with the receipt and attachments' certifications. We likewise include a copy of the Ecosystems letters.

In any event, we proceed once more to respond to the comments individually received:

a. Submarine Archeological Resources and Sites Study and Conservation Council: Endorses through its letter of August 25, 2000.

b. Office of the Governor dated August 30, 2000; requests a cultural resources study (Stage I). In the communications we had submitted and once more include here a copy of a letter regarding this same land site, dated December 10, 1992, in which the Institute of Culture states that it received and accepted an archeological study with negative results for cultural resources, and therefore endorsed the expansion. We understand that a negative certification for natural resources, though it may be from 1992, is sufficient.

c. US FISH AND WILDLIFE SERVICES:

In a letter dated March 28, 2002 they confirm a "non jeopardy opinion" from 1995 for the manatee that is applicable to the present development, requiring compliance with the requirements contained therein and asking Villa Marina to make a statement regarding the "fueling" "pump out" and "endangered species".

Villa Marinas has always expressed its intention to comply with the recommendations and requirements, including signs and information about the manatees, the exclusion of jet skis, speed limits, etc.

As informed, there will be no gasoline station and the "pump-out" will be done with a cart and pump that is used at the existing marina.

d. DNER:

Letters of September 8, 2000 and August 31, 2000.

The comments were covered through the environmental document and the letters from Ecosystems, which were notified and are enclosed. The breakwater design, as well as that for the marina were part of the "Public Notice" by the Corps of Engineers (CE) (copy included). The cumulative impact, navigation channel,

distances, development plan, and breakwater specifications were discussed in the aforementioned documentation.

e. See item #1 in this letter.

e. [sic] Richard Vito letter: See fax communication dated August 27, 2002 to Rose Ortiz including our communications addressed to the CE dated August 22, 2002 and July 10, 2002 answering Vito's comments item by item.

Once more I want to state that this case should have been deemed complete for consideration and the regulatory period should have begin no later than April 5, 2002, since it had the environmental document and basically all known concerns had been addressed. This expansion is basically the same place with minimal variations that had already been approved by the Corps of Engineers and the consistency finding by the PB (copies of the prior permits are enclosed), and other than the Sea Lover's expansion, from which it is properly separated, there are no changes in the area. It is certainly a better practice to expand in areas with an infrastructure that has already been impacted by developments, than to impact new areas. Villa Marina has always established the need for additional spaces for the industry.

This is a case that has actually been pending since 1999 and that had already been approved and previously considered compatible, therefore it should be given priority and consideration, in addition to the patent need for additional piers to accommodate the demand and the tourism importance of this sector since we are proposing a "commercial charters" center in the expansion.

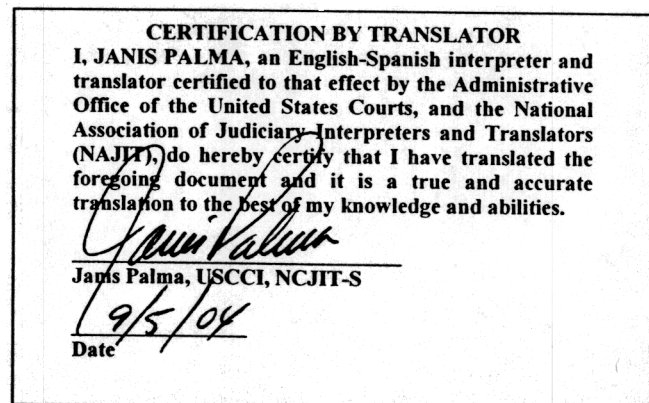
Should you need additional information, please contact me.

Sincerely,

[signature]

Eduardo Ferrer-Ramírez, Esq.

cc. Gustavo Rodríguez  
Hon. Severo Colberg Toro



## **Explanatory Memo**

Re: Joint Permit Application  
Villa Marina Expansion  
Yacht Harbor Inc.  
Sardinera Beach, Fajardo, PR

### **Description Of Project**

Villa Marina Yacht Harbor, Inc. Wants to expand its existing facilities by constructing a new pier in the water at Sardinera Beach in Fajardo. These new pier facilities will provide docking accommodation for 125 medium sized boats. This pier will extend approximately 700 feet in the water from the existing shoreline, North of the existing entrance channel of the marina. In the outermost section of this new pier a breakwater will be build with rocks.

### **Dredging**

No dredging will be necessary for this project.

### **Depth**

The mean depth from sea floor to water surface in project area is eight (8) feet. Please refer to attached drawing form the National Oceanic and Atmospheric Administration.

### **Breakwater**

A breakwater will be built in the outermost section of this new pier. This breakwater will be 35 feet wide in the bottom and 15 feet wide on the top. It will have a height of 18 feet from the sea bottom and will be 398 feet wide. The volume of rock needed for this breakwater is 73,000 cubic yards.

### **Sewage Facilities**

Bathrooms and a sewage head pumping facility will be provided on the new pier.

### **Fueling Facilities**

No fueling facilities will be built on this new pier. Boat owner will be allowed to use the existing Marina fueling facilities.

## **Contingency Plan for Possible Oil Spills**

In the event of an oil spill, proper authorities will be notified and appropriate steps of containment with the existing equipment at the Marina will be taken.

## **Dimensions and materials of Typical Dock**

The typical dock is to serve a medium sized boat. The width of this dock is 12'-14' feet as limited by the mooring piles on each side. This mooring piles will be of eight (8) inches diameter and 16 feet long. These mooring piles will be made of concrete.

The project consists of creating an additional 125 power boat slips. The configuration of the marina to be expanded is rectangular, with its southern side open to navigable waters. A concrete access pier 20' wide ("Boardwalk") will connect the "new" Marina to the existing Villa Marina facilities. The slips will be divided as follows: 29 slips, 40 feet long by 17 feet wide; 32 slips, 45 feet long by 18 feet wide; 32 slips, 50 feet long by 19 feet wide, and 32 slips, 60 feet long by 22 feet wide. Permanent docking will not be allowed along the access finger piers or the terminal "T"s - only temporary docking. On the northeastern end of the rectangular - shaped marina, a dock master's office will be constructed. Concrete pilings will be placed to support the access docks and finger piers. No dredging for the creation of the additional slips is proposed as part of this project.

## **Dimension and Material of Decking to Access Boats**

The typical decking will be made of galvanized steel framing and wood planks on the top. It will be from 8 to 10 feet wide. For support it will have piles made of 3 inches galvanized pipe encased in 8 inches PVC pipes filed with concrete.

## **Dimensions and Material of Main Boardwalk**

The main boardwalk will be 10 feet wide. It will be built of precast concrete slabs and precast concrete beams with cast in place concrete filler. For support it will have piles of 12 inches diameter and a length of 20 feet.

## **Benefits to the community**

This project will provide needed docking facilities for medium sized boats. It will provided recreational facilities and will help increase tourism in the area.

The proposed project should satisfy the increasing demand for boat slips in this part of the island. It should also have a positive impact on the tourism industry in Fajardo and add another recreational area to the sector. During construction, it is expected that the project generate approximately 200 direct and indirect jobs. During operation, the new facilities should generate approximately 150 direct and indirect jobs.

### **Marine communities in Project Area**

Studies have been made at Sardinera Bay Fajardo that have concluded that there are no reefs, aquatic plants or other aquatic communities of significance in the area.

The location where the marina expansion and breakwater are proposed contain no benthic resources such as coral, algal mats, sponges or other.

### **Drawing**

Enclosed with dimensions:

### **Existing and Additional Parking:**

VMYH currently provides its users with 183 parking spaces directly in front of the marina and its "wet slips". In addition, about 80 additional spaces are provided in an 5 acre adjacent parcel when needed.

For the expansion a second level parking area will be built on top of the existing parking to provide 154 additional spaces. (See Drawing).

JP  
COMMONWEALTH OF PUERTO RICO  
OFFICE OF THE GOVERNOR  
PLANNING BOARD

MINILLAS GOVERNMENT CENTER  
DE DIEGO AVE., STOP 22, SANTURCE  
PO BOX 41119, SAN JUAN, PUERTO RICO 00940-1119

[handwritten:] *Planning Board*

July 9, 2003

Mr. Eduardo Ferrer-Ramírez  
Villa Marina Yacht Harbour Inc.  
PO Box 485  
San Juan, Puerto Rico 00902

**Certification of Federal Compatibility**  
**CZ-2001-0529-117**  
**Joint-Appl. 179**  
**198800516(IP-VG)**  
**Marina Expansion**  
**Villa Marina Yacht Harbor**  
**Sardinera, Fajardo**

Dear mister Ferrer:

We make reference to the Federal Compatibility with Coastal Zone Management Program Certification of caption. The Federal Compatibility applications are referred to different state and federal agencies for evaluation. We have received comments from the State Historical Preservation Office (SHPO), the National Marine Fisheries Service (NMFS), the Fish & Wildlife Service (FWS), the Environmental Quality board (EQB), the Maternillo and Mansión del Sapo Fishermen Association, Sea Grant, Sea Lovers Marina and Mr. Frank D. Inserni. Enclosed you will find a copy of the letters from these agencies.

After conducting the evaluation of the information contained in the file and the comments received, we see fit to mention the following:

- 1- The Department of Natural and Environmental Resources (DNER) is the agency responsible for the custody and administration of the public domain lands. We understand that the application for the Use Concession for Maritime Land and Submerged Lands Zone is incomplete given that the requirements by this agency to evaluate it have not been met. The endorsement by the DNER is extremely important since the impact this marina may have on public domain assets is considerable.

- 2- There is a concern on the part of the citizens, especially fishermen and neighbors, as to the impact this project will have on the quality of life and economic activities they carry out. These are as follows:

"PLANNING PUERTO RICO'S TRANSFORMATION WITH YOU"

Federal Compatibility Certification  
CZ-2001-0529-117  
Page 2

Traffic increase and congestion: the expansion of the 125 docks involves a considerable increase in traffic, particularly during long weekends or days when there is a higher demand for the use of the vessels or social activities at the marina's facilities.

Restriction of the navigation space and area for fishermen's boat anchoring: this expansion must not negatively affect the activities that already exist in the area. The proposed marina imposes a considerable restriction on the use of public space.

Conflict between the proposed expansion and the approved expansion for the Sea Lovers Marina: Mr. Richard Vito has expressed a concern given that the docks that are being built for his marina's expansion are intended for boats over 80 feet in length, and the 150 meters of channel that would remain between the new facilities and Sea Lovers' is not enough for these vessels to make a safe turnaround.

Insufficiency of parking spaces: Villa Marina Yacht Harbor currently provides service to more than 200 vessels and only has around 108 parking spaces. Apparently the new parking spaces would be located in the area that abuts with road 987, but according to the aerial photographs this space is too narrow for this purpose. The site where the new parking will be located must be shown on an aerial photograph.

- 3- The proposed expansion must be evaluated pursuant to a site consultation: this water-dependent use involves other land uses and some activities associated to the urban surroundings with an impact that must be evaluated by this Board. The required steps have not been taken to update the site consultation documentation.
- 4- The feasibility of the breakwater as to its location and design is highly questionable: the Corps of Engineers and the DNER, agencies responsible for the evaluation of this aspect, have not endorsed it. Upon observing the



study submitted as part of the Environmental Impact Statement, we noticed that it was prepared for another marina. This study does not simulate the conditions that would actually exist with the proposed breakwater. The location of the sunken ship and the buoys greatly differs from the actual location of the proposed breakwater. The proposed breakwater would be aligned with the one for Puerto Chico Marina. This could have a significant impact on the currents' pattern, increasing their intensity in the navigation channel used by the other marinas.

Federal Compatibility Certification  
CZ-2001-0529-117  
Page 3

The effect of the currents and waves that could be created as a result of the new breakwater's location, especially during a storm, could threaten the integrity of the Villa Marina facilities and adversely affect the fishermen and other marinas' facilities.

- 5- In a letter dated May 13, 2002 (see enclosure) the Corps of Engineers had expressed a concern over the potential impacts this project could have on the water circulation, changes in sedimentation patterns, and navigational safety. This agency mentioned that apparently a Coastal Dynamic Study had been conducted, but it had not been submitted to the Corps of Engineers office.

The federal compatibility finding is based on the evaluation of the information submitted and the comments received from the agencies consulted and the public in general. We inform you that we will grant you twenty five days as of the date of this communication for you to react to the issues mentioned. Your answer must be received on or before August 4, 2003. During that period you may submit alternative actions or additional information that overcomes the issues raised.

Once the period granted ends we will make a final decision regarding the application, using the information available and following the applicable regulations. For any questions regarding this matter you may contact Miss Rose A. Ortiz at (787) 726-0289 or (787) 723-6200 ext. 2020.

Cordially,

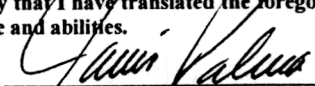
[signature]

María B. Márquez  
Acting Director  
Land Use Plans Sub-Program

Enclosure: letters

c: Mr. Edwin Muñiz, CoE  
Mr. Celso Rossy, DRNA  
Mrs. Wanda García, JCA  
Mr. Enrique H. Gutiérrez, Agent

MML/RAO

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 Janis Palma, USCCI, NCJIT-S	Date <u>9/6/04</u>

[logo]  
Villa Marina  
Yacht Harbour Inc.

July 29, 2003

María B. Márquez  
Acting Director  
Land Uses Sub-Program  
P.R. Planning Board  
PO Box 41119  
San Juan, Puerto Rico 00940-1119

[date stamp and initials]

**RE: FEDERAL COMPATIBILITY CERTIFICATION  
CZ-2001-0529-117  
JOINT APPLICATION 179  
198800516(IP-VG)  
VILLA MARINA EXPANSION**

[DATE STAMP]

Dear Mrs. Márquez:

I make reference to your letter dated July 9, 2003 in which you make reference to the comments received from the agencies consulted and persons who made comments on the public notice.

Before going into the comments item by item in the same order as your letter, we want to stress once more that the marina expansion, with certain variations, had already been approved by the Corps of Engineers in the year 1989 through application #88IPM-20516, and a Finding of Consistency (CZM) had already been issued by the Planning Board (CZ-88-0512-172), but those expired.

In addition, we include a copy of a communication by our representative and consultant Environmental Permitting, Inc. to the Corps of Engineers submitting the bathymetry study, waves refraction study, and hydraulic stability study for the proposed breakwater, all of them prepared by Dr. Alfredo Torruellas, Ph.D., from Caribbean Oceanography Group. These

[date stamp]

PO Box 9020485 San Juan PR 00902-0485 • Tel. (787) 721-8062 • Fax (787) 721-3127

Studies cover all the concerns and technical aspects related to the proposed breakwater, sedimentation, effects of the currents, etc. Also included is an aerial photograph showing the proposed expansion in relation to Puerto Chico and Sea Lovers marinas, and the separation distance in addition to a diagram with the realignment of the marina in which the spaces are reduced to 113.

Answer to comments:

1. DNER Comments:

It is important to mention that the process for the application and acquisition of a Maritime Land Zone Use Concession is premature since it will depend on the approval of the expansion, to then obtain the concession and begin to pay the respective fees. The construction, not the finding of compatibility for the expansion, is subject to the DNER Concession.

As to any comments or concerns from the **DNER**, we have a statement from **NOAA Fisheries** that the expansion will not affect the maritime resources at Sardinera Bay, another one from **Fish and Wildlife** that it does not represent a danger for the endangered species, and another one from the Associate Director of the University of Puerto Rico Sea Grant Program endorsing the proposed expansion and solidifying our argument that it is better to expand existing marinas located in areas that have already been impacted, rather than impact new areas with new marinas causing the undesirable sprawl of these activities and affecting natural resources in other areas.

Any concern by the DNER has been covered by the studies submitted.

2. Comments by the Fishermen Association, Sea Lovers Marina and others:

The vessel traffic for the proposed expansion, as well as from the existing piers at Villa Marina, is segregated from the fishermen's access, Puerto Chico and Sea Lovers. The design provides adequate navigational channels for the fishermen and other vessels. As may be seen in the illustration submitted, the channel for the marinas is at least 150 feet, and the one for the fishermen is 100 feet.

According to the industry, the proper space for a vessel to make a turn of up to 180 degrees is one and a half times its size. According to our information, the fishermen's vessels do not exceed 30 feet in length, therefore the distances are appropriate. As to Puerto Chico, its docks accept vessels of a maximum of 60-65 feet, requiring no more than

90-95 feet for "passageway", and Sea Lovers does not accept vessels greater than 50 feet, therefore the required "passageway" is 75 feet.

We should mention that Sea Lovers and Puerto Chico were approved with internal passageways that range from 37' to 60 feet maximum. Even the Puerto Chico passageway through which "dry stack" vessels travel has a service "passageway" of 60'. (To check the distances, you may look at the aerial photographs with the distances. Even in front of the two "Ts" that would supposedly serve two vessels of up to 110', we understand that, according to the location of the two docks and the nature of the boats, these can maneuver with the "passageway" proposed and back out to the area where the channel widens with no problem. In any event, the turnaround area according to the industry would be 165' for vessels of 110', which for the most part have "bow thrusters" in front that enable them to turn on their axis with lesser distances, that is, 150'.

We must mention that Sea Lovers' firm opposition must be considered in light of the fact that it is a competing marina. Furthermore, Villa Marina has learned that the Corps of Engineers has notified them and is investigating the fact that Sea Lovers has extended beyond the authorized area. The truth is that without the new breakwater proposed by Villa Marina, Sea Lovers' additional piers would suffer from such motion as to render them unusable (see wave refraction model submitted.) The approved expansion for Sea Lovers certainly did not include the data necessary for the actual conditions therein (the scrutiny by this agency for the Sea Lovers' expansion was minimal, as reflected in the file itself.)

The proposed expansion does not limit the anchoring area for the fishermen, furthermore, it converts the area close to the fishermen's center and the shore where they anchor into a more protected area and acceptable for anchoring because the new breakwater will better protect this area.

The Villa Marina parking area is adequate and has never been questioned. The current parking, in addition to the spaces that are being used in existing areas, may serve the expansion comfortably. The parking on the other side of Road #987 mentioned by the Association was one proposed previously for the development of a Condo-Hotel that is not the object of this compatibility proceeding. We must recall that this expansion has been previously declared compatible by the Board.

We agree with the comments by the fishermen association in relation to the few coastal areas to be enjoyed by Puerto Rican families, and that the sprawl of marinas along the coastline is undesirable. This is precisely the reason why the Sea Grant program agrees (that it is better to expand the

Existing marinas with an infrastructure than to have new marinas that will affect new areas and coastlines.)

Sardinera Bay is already impacted by the marinas and does not have an actual beach for bathers. The Association is opposed to the development of more marinas and expansions in Fajardo, but it is actually the new marinas, not the expansion of existing ones, what is incompatible with their opposition to the sprawl.

3. Need for Site Consultation.

We must stress that the instant application for Compatibility stems from a federal delegation (from NOAA, the entity that currently reviews compatibility findings) as to the compatibility of coastal uses, and it is in response to a permit application made to the United States Corps of Engineers that the compatibility application is processed, which requires no site consultation whatsoever.

The proposed expansion does not involve any land development, or variation in use or zoning. This development is an expansion of an existing marina, previously approved with no need for consultation. Any denial because the PB demands a consultation could be in violation of the federal regulations as to the coastal zone management program (Coastal Zone Management).

We believe this process, as submitted, requires no site consultation whatsoever. In addition, we are concerned that the expansions of the other marinas in Sardineras bay were approved with no greater or comparable demands, and that Villa Marina is the one being required to submit to different procedures.

There is no site consultation for this case nor should one be conducted.

4.; 5. Breakwater and Water Circulation.

You mention in your letter certain concerns by the Corps of Engineers regarding the breakwater and the water circulation. In answer to those concerns by the Corps of Engineers, the agency with the "expertise", we submit the detailed studies prepared by Dr. Alfredo Torruellas, regarding currents, breakwater design, and wave refraction, all of which address any concern and support the proposed expansion.

According to this process, the Corps of Engineers does not endorse, but rather approves or denies this type of application when it finishes reviewing them, requiring a compatibility finding prior to issuing its approval.

Based on the information submitted and considering that virtually the same expansion had already been approved by the Corps of Engineers and found to be compatible by the PB, we very respectfully understand that all the requirements have been met and all the information to approve the proposed expansion has been provided, being clearly compatible with the intended use for Sardinera bay and the strategy to prevent sprawl and impact on new coastal areas. The studies offered go far beyond what is typically required and solidly show the feasibility of the proposed expansion and the adequacy of the distances. An isolated statement in a vacuum from a direct competitor alleging that the distances are not adequate is not enough, when the design and distances of the passageways in their own marina are smaller. Mr. Vito's motivation, the owner of the Sea Lovers, is obvious, to avoid any competitor's expansion.

I hope that with this information the Honorable board is in a position to authorize a favorable finding of compatibility for the proposed expansion, which is necessary to cover the demand of dock space by Puerto Rican and tourists alike. As we have stated, the intention is to use the expansion for sailboats and "charter" vessels that currently cannot be served at Villa Marina.

Should you need any additional information, please contact the undersigned.

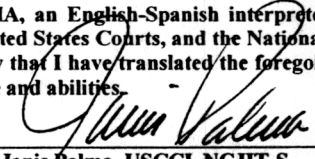
Sincerely,

[signature]

Eduardo Ferrer-Ramírez, Esq.

cc. Rose Ortiz  
EFB  
Gustavo Rodríguez

5

<b>CERTIFICATION BY TRANSLATOR</b>	
I, JANIS PALMA, an English-Spanish interpreter and translator certified to that effect by the Administrative Office of the United States Courts, and the National Association of Judiciary Interpreters and Translators (NAJIT), do hereby certify that I have translated the foregoing document and it is a true and accurate translation to the best of my knowledge and abilities.	
 Janis Palma, USCCI, NCJIT-S	Date <u>9/6/04</u>

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OLGA M. ALICEA, USCC

[Letterhead of Sea Grant

May 1, 2003

Ms. Rosa A. Ortiz  
Office of the Secretary  
Planning Board  
P.O. Box 41119  
San Juan, Puerto Rico 00940-1119

Comments on Federal Compatibility Certification of the Villa Marina Yacht Harbour expansion project, Planning Board Case Number CZ2001-0529117, Joint Application Number 179, and Corps of Engineers Permit Number 198800516(IP-VG).

The project before the consideration of the Planning Board (PUEBLO) proposes the construction of a 125 piers marina as part of the expansion of the Villa Marina Yacht Harbour (VMYH) facilities located in the Sardinera Ward of Fajardo, an area highly developed by the marine recreation and coastal tourism industries. The ramp facilities, piers, boat slips, docks, dry docks, and staggered storage form part of the ocean access infrastructure that serve as support to the marine recreation and tourism industries. These offer a variety of recreational and economic opportunities to tourists, residents, to private industry, and to the government.

The demand for access to the sea in Puerto Rico is greater each day due to the: a) increase in pleasure time; b) money available to invest in recreational activities and equipment to practice these; and c) to the technological advances that allow the manufacture of speedier, lighter, safer, and easier handling sports equipment (boats, personal vessels, diving equipment, sailboards, jet boats, recreational fishing, sailboats). Supplying this demand is a responsibility shared with the public and private sector. A large variety of users require access to the ocean to perform recreational and commercial activities and to comply with the laws. Among others, we can mention: a) those who enjoy recreational activities (seafarers, fishermen, divers); b) owners of business that support marine recreations and coastal tourism (fishing charter boats, recreational diving, rides); c) regulatory agencies (DNER, Puerto Rico Police, Border Patrol, Coast Guard); and d)



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OLGA M. ALICEA, USCCI

seafarer services business (marine cranes, vessel repair and maintenance, equipment sales). Several regulatory agencies of the government of Puerto Rico are responsible for regulating, evaluating and issuing permits for these facilities.

The development of marinas in Puerto Rico increased during the past decade due to its direct relationship with the real estate business, especially apartment sales. Departing from this premise, we can deduce that the proliferation of proposals for the development of marinas should continue upward since it is a good business hook for the sale of apartments aside from the fact that these can be sold at a higher cost as they offer the advantage of offering access to the ocean. The development of marinas in Puerto Rico should be limited to those areas where this type of access infrastructure has already been established. If this criterion is adopted by the regulatory agencies in the process of evaluating the proposed marina projects the spreading of this type of facilities can be reduced, thus reducing the degradation of pristine areas essential to the conservation of bio-diversity.

In general, when we see a marina our attention is concentrated in the vessels and access facilities and we do not think about the positive and negative impacts generated by this type of infrastructure. Aside from providing access to the ocean, these developments are an important source of jobs, economic and recreational opportunities. The marinas also involve an element of risk due to their possible impacts on the marine ecosystems, including oil and fuel spills, the general of solid wastes, the elimination of mangroves, marine grasslands, and wetlands, the resuspension of sediments, visual impact, auditory impact, the reduction of access to the maritime land zone, and the displacement of traditional coastal uses.

The expansion of existing marinas is one of the best strategies to use in the effort to supply the demand for access to the sea in Puerto Rico and to reduce possible negative impacts. Concentrating the development in these areas prevents a continuing impact on areas of ecological value. The preservation of the mangroves, wetlands, coral reefs, marine grasslands, the qualify of the water, fishing, sandy beaches, and life should be the priority of marine developers and the objective of the agencies that regulate and evaluate the proposed projects. If the qualify of these natural attractions is degraded, the same thing will occur with the

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OLGA M. ALICEA, USCCI

recreational and economic opportunities offered by these industries.

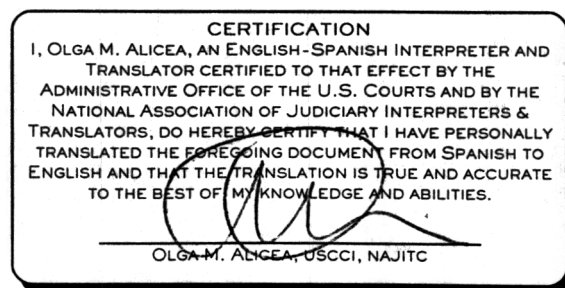
The University of Puerto Rico's Sea Grant Program does not have any objection to the expansion of the Villa Marina Yacht Harbour facilities since we consider it to be much healthier for the environment to concentrate and restrict the development of ocean access infrastructure to certain specific highly developed and impacted areas. This way we will be preventing the spreading of ocean access facilities that place at risk ecologically valuable areas that still preserve their pristine state. This way the ecosystems and natural attractions will be preserved while supplying the demand for access to the sea.

Should you need any further information in this regard, do not hesitate to communicate with our Program.

Sincerely,

(Signed)  
Ruperto Chaparro  
Associate Director

xc: Eduardo Ferrer



[logo]

## PUERTO RICO INSTITUTE OF CULTURE

RESEARCH CENTER

Box 4184  
SAN JUAN, PUERTO RICO

December 10, 1992

Mrs. Lilliane D. López, Director  
PLANNING BOARD  
P.O. Box 41119  
San Juan, Puerto Rico 00940-1119

Dear Mrs. López:

RE: VILLA MARINA, SALDINERA WD.  
FAJARDO, PUERTO RICO  
CONS. NO. 86-24-2211-JPU

The Archeology Program has received the archeological study performed by Archeologist Jaime G. Vélez, for the project of reference. It properly complies with the requirements in effect for this level of research for cultural resources.

According to the statements made by archeologist Vélez, the study conducted was negative for cultural resources. To that effect, we are issuing an endorsement for the project in its archeological aspect, and hope it can be developed according to plans.

We remind you, however, that pursuant to the provisions of Public Law 112 of July 20, 1988, should any cultural remnants be found during the earth movement, the project should be stopped and the Institute of Puerto Rican Culture should be notified.

We take this opportunity to acknowledge your interest and collaboration in the study and protection of the archeological legacy of the Puerto Rican people.

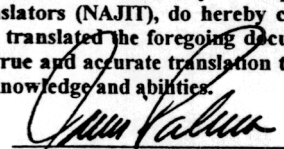
Cordially,

[signature]  
Miguel Rodríguez  
Director  
Archeology Program

vso

Cf: Archeologist Jaime G. Vélez

**CERTIFICATION BY TRANSLATOR**  
I, JANIS PALMA, an English-Spanish interpreter and translator certified to that effect by the Administrative Office of the United States Courts, and the National Association of Judiciary Interpreters and Translators (NAJIT), do hereby certify that I have translated the foregoing document and it is a true and accurate translation to the best of my knowledge and abilities.

  
Janis Palma, USCCI, NCJIT-S9/3/04  
Date

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COMMONWEALTH OF PUERTO RICO  
OFFICE OF THE GOVERNOR  
ENVIRONMENTAL QUALITY BOARD

April 28, 2003

DADA-1327-03

Mrs. Carmen Torres-Meléndez  
Secretary  
**Planning Board**  
Box 41119 Minillas Station  
Santurce, Puerto Rico 00940

[handwritten:] 2000-74-031-JPU

**SUBJECT: CZ-2001-0529-179**  
**JCA 01-025 (JP)**  
**VILLA MARINA EXPANSION**  
**YACHT HARBOR INC.**  
**SARDINERA WD.**  
**FAJARDO**

[date stamp and initials]

Dear Mrs. Torres-Meléndez:

Regarding your communication of April 28, 2003, in relation to the Project mention in the subject, we wish to **confirm** that through a letter dated March 31, 2003 (copy enclosed), **the Planning Board informed us about the closing of the consultation** at the proponent's request.

We are at your disposal to clarify any doubts on the matter.

Cordially,

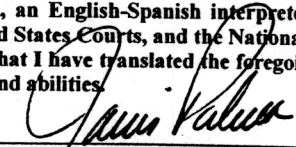
[signature]

Mrs. Iris C. Cuadrado-Gómez  
Director  
Scientific Advisory Area

[date stamp]

enclosure

*Making A Better Living Environment Possible.*  
National Plaza Bldg., #431 Ponce de León Ave.  
Box 11488, Santurce, Pto. Rico • Telephone: 787-767-8181

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 Janis Palma, USCCI, NCJIT-S	Date <u>9/6/04</u>

[logo]

*Submarine Archeological Resources and Sites Study and  
Conservation Council*

*El Arsenal, La Puntilla, Old San Juan, P.O. Box 9024184, San Juan, Puerto Rico 00902-4184  
Tels. (787) 722-3769, 724-0855 / 0856, Fax 723-4799*

[date stamp]

August 25, 2000

["Received" stamp]

Max L. Vidal Vázquez  
Secretary  
Planning Board  
P.O. Box 41119  
San Juan, PR 00940-1119

SUBJECT: CZ-2000-0523-078  
FAJARDO (JT.APPL.0063)

Dear mister Vidal:

The personnel in our office has evaluated the documents received regarding the written project of reference. After reviewing the information in our possession, we think this activity has not potential for impact on the marine bed and the submarine archeological resources. However, should any archeological evidence be found during the process of the project's activities, we ask that you immediately contact our office at 723-3769, 724-0855 or 723-4799 fax.

Thank you for your customary cooperation in the protection of the submarine archeological resources

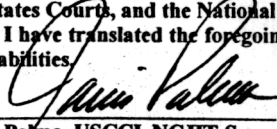
Cordially,

[signature]

Arch. Juan Vera Vega  
Director  
Office of the Submarine Archeology Council

drs

[date stamp]

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 Janis Palma, USCCL, NCJIT-S	Date <u>9/4/04</u>